

No. 13-1021, -1022

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

ORACLE AMERICA, INC.

v.

GOOGLE INC.

**UNOPPOSED MOTION FOR EXTENSION TO FILE
COMBINED APPELLEE'S BRIEF AND CROSS-APPELLANT'S BRIEF;
SUPPORTING DECLARATION OF STEVEN A. HIRSCH**

MOTION

Under Federal Circuit Rule 26(b), appellee and cross-appellant Google Inc. (“Google”) moves for an extension—from the current due date of March 25, 2013 to the revised due date of May 23, 2013—to file its combined Appellee’s Brief and Cross-Appellant’s Brief (“Google’s First Brief”). Appellant Oracle America, Inc. (“Oracle”) does not oppose this motion and previously received an equivalent extension for its opening brief.

1. As required by Circuit Rule 26(b)(2), Google has informed all other parties that it will seek this extension.
2. As required by Circuit Rule 26(b)(3), Google states that Oracle agreed to the requested extension by telephone and in correspondence on November 20,

2012, and in its November 29, 2012 motion for an extension (document 33), which this Court granted (document 34). Oracle's motion specifically proposed a due date of May 23, 2013 for Google's First Brief. *See* document 33 at pp. 3-4.

3. As required by Circuit Rule 26(b)(4), Google states that (A) the date to be extended is March 25, 2013; (B) the revised date sought is May 23, 2013; (C) the number of days of extension sought is 59; and (4) the total number of days of extension previously granted to the movant is zero.

4. As required by Circuit Rule 26(b)(5), this motion is accompanied by a declaration of counsel showing good cause for an extension that exceeds 14 days. *See* Declaration of Steven A. Hirsch (attached).

Dated: February 21, 2013

Respectfully submitted,

s/Steven A. Hirsch

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DECLARATION OF STEVEN A. HIRSCH

1. I am an attorney at law duly admitted to practice law in the States of California, New York, and Connecticut and in the District of Columbia, and am a partner with the law firm of Keker & Van Nest, LLP, counsel to defendant, appellee, and cross-appellant Google Inc. (“Google”) in this matter.

2. I have knowledge of the facts set forth below and, if called as a witness, could and would testify to them.

3. I make this declaration as required by Circuit Rule 26(b)(5) to demonstrate good cause for an extension that exceeds 14 days.

4. On November 20, 2012, Mr. Mark Davies (counsel for Oracle America, Inc. (“Oracle”)) contacted me via telephone and corresponded regarding Oracle’s motion for a 55-day extension of time to file Oracle’s opening brief. Google agreed not to oppose Oracle’s motion so long as Google received an equivalent extension. Oracle agreed that it would not oppose Google’s motion for an equivalent extension of time. Oracle’s extension motion stated that, “[i]f an equivalent extension was granted for Google, its initial brief would be due May 23, 2013.” Document 33 at pp. 3-4.

5. Besides the fact that Oracle agreed to this extension and received an equivalent extension itself, an additional good cause for the requested extension is the massive record of this case, described as follows in paragraph 4 of Oracle’s

extension motion (document 33): “There are over 1200 entries on the district court docket; the copyright portion of the trial was 12 days long and produced almost 2,800 transcript pages; the jury deliberated for five days; the parties filed 48 motions, applications, and briefs on just the issues of copyrightability and infringement; the district court issued nearly 300 orders; and the record contains approximately 138 gigabytes of pleadings, other filings, orders, trial exhibits, demonstrative exhibits, expert reports, transcripts, and the like.”

6. As an additional good cause for the requested extension, Google notes that six amicus briefs have been filed in support of Oracle:

- Brief for Amicus Curiae Ralph Oman Supporting the Position of Plaintiff-Appellant and Urging Reversal (document 46) (6,959 words);
- Brief of Amici Curiae Picture Archive Council of America, Inc. and Graphic Artists Guild in Support of Plaintiff-Appellant Seeking Reversal (document 54) (6,390 words);
- Brief for Amici Curiae Microsoft Corporation, EMC Corporation, and NetApp, Inc. in Support of Appellant (document 55) (4,965 words)
- Brief of Scott McNealy and Brian Sutphin as Amici Curiae in Support of Reversal (document 58) (5,753 words);

- Brief for BSA | The Software Alliance as Amicus Curiae in Support of Plaintiff-Appellee Oracle America, Inc. (document 59) (6,622 words); and
- The Brief of Amici Curiae Eugene H. Spafford, Ph.D., Zhi Ding, Ph.D., and Lee A. Hollaar, Ph.D. in Support of Appellant (document 62) (4,497 words).

7. These six amicus briefs contain a total of 35,186 words—more than 2.5 times the length of Oracle’s opening brief (which contains 13,998 words). Google’s First Brief will be its last opportunity to respond to these additional briefs (except to the extent that they bear on Google’s cross-appeal).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 21, 2013.

s/Steven A. Hirsch

STEVEN A. HIRSCH

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/Steven A. Hirsch
Steven A. Hirsch